

In the Matter of License No. A-54803
Issued to: ORLEN GEORGE OAKLEAF

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD
(REMANDED APPEAL NO. 893)

918

ORLEN GEORGE OAKLEAF

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 22 May 1955, an Examiner of the United States Coast Guard at Panama City, Florida, suspended License No. A-54803 issued to Orlen George Oakleaf upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as operator on board the American Motorboat GRACIE RAE under authority of the license above described, on or about 9 April 1955, while said vessel was navigating in the vicinity of the passenger motorboat QUEEN OF QUEENS, near St. Andrew dock, he operated the boat in an unsafe manner and at excessive speed while carrying passengers for hire.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant acted as his own counsel. He entered a plea of "not guilty" to the charge and specification preferred against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence, on the matters of the specification, the testimony of two witnesses, Alfred R. Holley, operator of QUEEN OF QUEENS, and Donald M. Morrell, operator of M/B JUDY BETH.

In defense, Appellant offered in evidence his sworn testimony and that of George W. Walker, deck hand aboard the GRACIE RAE.

At the conclusion of the hearing, having heard the argument of the Investigating Officer (Appellant waived argument) and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. A-54803 for a period of fifteen months. This period incorporated a suspension, previously ordered by an Examiner, after a finding that probation had been violated.

On appeal, the order was vacated, the findings set aside, and the case remanded to the Examiner. (Order No. 893, dated 22 May 1956). In proceedings on remand the Examiner heard further argument from Appellant, now represented by nonprofessional counsel of his own choosing. After finding the charge and specification proved, the Examiner entered an order suspending Appellant's license for a period of six months on eighteen months' probation.

FINDINGS OF FACT

On 9 April 1955, Appellant was serving as operator of the American passenger-carrying motorboat GRACIE RAE and acting under authority of his license A-54803. On that date, Appellant was returning to Panama City, Florida, from the Gulf of Mexico. GRACIE RAE was following the passenger-carrying motorboat QUEEN OF QUEENS and both were headed for Buena Vista Shoal Light, from which mark both would change course to proceed to their berths, about two thousand feet further distant. Appellant's boat, overtaking, was proceeding at about twelve or thirteen knots. QUEEN OF QUEENS, operated by Alfred R. Holley, was making about eleven knots. No whistle signals were sounded by either vessel.

GRACIE RAE passed QUEEN OF QUEENS at a time when the overtaken boat was ten to fifteen feet to the right, or east, of the light structure. The overtaking boat was twenty-five to forty feet to the west of QUEEN OF QUEENS, and, necessarily, on the west side of the light structure. While the overtaking was in progress QUEEN OF QUEENS reduced speed to about five knots. The overtaken boat yawed to the right because of swells, and green water came aboard its port side for a distance of about thirty feet at the after end.

After the overtaking both vessels proceeded to their berths. There was no damage to either boat and no person was injured.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends:

1. that there is conflict in the testimony as to the washing down of the deck of the overtaken boat;
2. that the evidence does not establish that the M/B GRACIE RAE almost ran the M/B QUEEN OF QUEENS on Buena Vista Shoal Light;
3. that there is a variance in the testimony with regard to the lateral distance between the boats;
4. that the evidence does not establish that the wake of the M/B GRACIE RAE turned the M/B QUEEN OF QUEENS 90 degrees to the right; and

5. that the order is excessive.

OPINION

Appellant's contentions concerning conflict in testimony (points one and three) need no discussion because the Examiner has resolved the conflict and made findings based upon substantial evidence.

Before considering Appellant's second and fourth contentions, I must note that they deal with important evidentiary facts. Since the specification alleges unsafe operation and excessive speed, the circumstances must establish that the operation of Appellant's boat caused a hazard to the overtaken boat. Operation which might cause another boat to run into a fixed aid to navigation or to run out of control would clearly be reprehensible. The record must therefore be examined carefully to determine whether there is support for findings that Appellant did act in this fashion.

The Examiner has found specifically that the overtaken boat was almost forced into the light structure by the operation of Appellant's boat. The eleventh finding is that

"Captain Alfred R. Holley seeing the M/B GRACIE RAE approaching from astern on a course which would bring him by the M/B QUEEN OF QUEENS in very close proximity at the time he was approaching with the Buena Vista Shoal Light off her starboard bow swung the M/B QUEEN OF QUEENS to the right of Buena Vista Shoal Light (R. 42) and the overtaking M/B GRACIE RAE proceeded on her course passing to the left of the Buena Vista Shoal Light."

This point is treated also in the Opinion which refers to testimony of Captain Donald M. Morrell that "M/B QUEEN OF QUEENS proceeds back to her wharf by first passing the Buena Vista Shoal Light on her starboard and then navigates into her dock," and also to Morrell's observation of the M/B QUEEN OF QUEENS on approaching the Buena Vista Shoal Light going to her starboard to make more room as concerns the M/B GRACIE RAE approaching from her stern."

The testimony of Morrell in the record does not support the belief that QUEEN OF QUEENS customarily proceeded past the light by leaving it to starboard. Morrell testified (R. 18) that Appellant had passed him "before Mr. Holley could make the light where he goes in his dock, . . . " He added, "I saw Mr. Holley of the QUEEN OF QUEENS come over to starboard to give him more room."

It is an obvious inference from this that Holley customarily changed course at the light but the testimony does not establish that he made a practice of passing to one side or the other. The testimony as to Holley's motive for coming right is speculation.

If Holley were forced to maneuver from his intended heading by the crowding of an overtaking boat, it is to be expected that he would have said so. But in his testimony he made no

such statement. There is no support then for belief that his movement was embarrassed in any way until the claimed moment when his boat was turned "half way around", at which time the boats were already on opposite sides of the light structure. (R. 16)

As to Appellant's second point I find myself in agreement with him. The record does not support the naked claim that "he almost run me on the light."

With respect to the fourth point among Appellant's contentions, the Examiner stated that the wake of the M/B GRACIE RAE "would in all probabilities have affected the M/B QUEEN OF QUEENS to no greater degree than it did the M/B JUDY BETH had the M/B QUEEN OF QUEENS continued at her speed of around 11 miles an hour."

At this point I take note that the operator of the JUDY BETH testified to some embarrassment of his boat by Appellant's. While Appellant was not charged with usage operation in connection with his overtaking the JUDY BETH, I think it fair to consider that episode in connection with his contribution to the embarrassment of QUEEN OF QUEENS.

While it appears that the major cause of the difficulties encountered by Captain Holley was his own sudden reduction in speed, I cannot but find that to some degree Appellant's admission of excessive speed in the situation is supported by all the circumstances because the overtaking boat should cause no embarrassment whatsoever to that overtaken.

With that in mind, I will affirm the Examiner's finding that the charge and specification were proved. Nevertheless, my analysis of the record leads me to yield merit to Appellant's fifth contention, that the order is excessive.

The Examiner's original order in this case, vacated by me on first appeal, properly provided for the invocation of an earlier suspension of license. In framing his second order, the Examiner took note in his opinion that Appellant had already complied with the original order and that the license had in effect been suspended for nine months. Intending that the remaining six months from the original order should be reduced from outright suspension to one on probation the Examiner then entered the order on remand..

Taking into consideration the Examiners intention in this order, and also the effectual invocation of the probationary suspension ordered on 24 August, 1954, I therefore enter the following

ORDER

The order of the Examiner entered at Mobile, Alabama, on 9 July 1956, is hereby ~~RE~~MITTED.

A. C. Richmond
Vice Admiral, United States Coast Guard

Commandant

Dated at Washington, D.C., this 2nd day of October, 1956.